

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2207 of 1988

with

SPECIAL CIVIL APPLICATION No 2208 of 1988

and

SP. CIVIL APPLICATIONS No. 3843/90, 3844/90, 2045/89,
12096/94, 2192/95 and 2718/95

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

R.K.PATHAK

Versus

STATE OF GUJARAT

Appearance:

In Special Civil Application No 2208 of 1988

MR SR BRAHMBHATT for Petitioners

MR DA BHAMBHANIA for Respondents

In all other Special Civil Applications

None present for Petitioners

MR DA BHAMBHANIA for Respondent-State and its
Officers

None present for private Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/11/97

ORAL JUDGEMENT

1. Heard the learned counsel for the parties present in the Court.

2. All these matters arise out of seniority list dated 29th March, 1988 and pertains to the seniority dispute and as such, the same are being taken up for hearing together and are being disposed of by this common order.

3. As usual this is a dispute of seniority in between the direct recruitees and the promotees.

4. The petitioners are the direct recruits belonging to the cadre of Gujarat Administrative Service and their grievance is that despite of settled position of law by the Supreme Court as well as this Court, the recruitment has not been made in the prescribed percentage of direct recruitment and promotion which has affected adversely the seniority of theirs.

5. Earlier also, the petitioners have come up before this Court and this Court has given the direction for determination of the seniority in accordance with law but still the ratio of the decision of the Supreme Court in the case of N.K. Chauhan was not followed and the illegality has been committed.

6. However, detailed facts as well as the grounds raised by the petitioners are not required to be stated as what I feel that the seniority matter has to be decided by an alternate forum provided by the Government by constituting a Tribunal or by itself by constituting a High Power Committee and only thereafter the matter has to be brought before this Court. It is unfortunate that even the service matters of the nature of withholding of grade increments or withholding of crossing of efficiency bar or the matters pertaining to adverse remarks or seniority or supersession or promotions etc. are directly coming up before this Court as what I have been informed that the Service Tribunal though has been constituted by the Government but these service matters do not fall within its jurisdiction. That is the reason that heavy pendency has arisen in this Court. In case such disputes are dealt with by the alternate forum provided by the Government or by itself by constituting a High Power Committee after hearing all the affected

parties then there is a possibility that, that much of litigations may not come up before this Court, and secondly otherwise also it is in the larger interest of the Government itself. It is a fact of which judicial notice can be taken that in majority of the service matters filed by the employees or the officers of the State of Gujarat, no reply affidavits have been filed. The reasoned orders are invariably passed by the State or its functionaries in such matters. So in case a reasoned order is there and reply affidavit has not been filed still in that case this Court will be in a better position to decide the same on merits. The Court has to consider whether the reasons given by the State Government or its functionaries to pass the adverse order are legally correct or not.

7. So all these special civil applications are disposed of with the directions to the Chief Secretary of the State of Gujarat to constitute a High Power Committee under his Chairmanship consisting of other members - the Revenue Secretary, Secretary, G.A.D. and Law Secretary. The petitioners shall lodge their claim of seniority as well as their grievance against the seniority list challenged in this special civil application before the Chief Secretary of the State of Gujarat within a period of one month from the date of receipt of certified copy of this order and thereafter the matter shall be decided within six months. It is expected of the Committee to given an opportunity of hearing to all the affected persons and further those persons who desire the personal hearing in the matter and thereafter the matter may be decided by passing a reasoned order. While dealing with this issue, the Committee may also consider those decisions on which reliance has been placed by either of the parties. Interim relief, if any, granted by this Court in these matters shall continue for this period on the same terms and conditions. Liberty is granted to the petitioners for revival of these special civil applications in case of difficulty. All these special civil applications and Rule therein stand disposed of in the aforesaid terms with no order as to costs.
